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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,499	11/21/2003	John W. Palazzo	30978.24673	3025

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EXAMINER

DEVORE, PETER T

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No.	Applicant(s)	
	10/719,499	PALAZZO, JOHN W.	
	Examiner	Art Unit	
	Peter T deVore	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10 is/are allowed.
- 6) ☒ Claim(s) 1,6-9 and 11-18 is/are rejected.
- 7) ☒ Claim(s) 2-5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/21/03 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the provided drawings include photographs (Figures 1-3), Figure 3 should be Figures 3A-3C, Figures 4-12 include engineering drawing templates, and Figures 13-14 are informal. See MPEP 608.02 and 37 CFR 1.84.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 12 and 18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Regarding claim 12, although the specification describes the control panel as interchangeable between devices, it does not describe a control panel detachable from a single device so that it can be used to remotely control that device.

Regarding claim 18, although the specification explains that the caddy can be converted to a direct connect system via a kit, it does not disclose such a kit contained within the caddy.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 11, the claim language "the tubing being used..." appears to be a positively recited method step in an apparatus claim. It is thus unclear whether the claim is directed to an apparatus or a method.

Regarding claim 13, the claim language "the device is located outside..." appears to be a positively recited method step in an apparatus claim. It is thus unclear whether the claim is directed to an apparatus or a method.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9 and 14-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Shumate.

The Shumate reference discloses a portable waste oil storage caddy comprising a motor (see col. 4, lines 20-25), a pump 74, a body (See Figure 3), a waste oil container 76, a filter 78, first and second tubing (tubing connected to inlet and outlet of pump 74, see Figure 13), and a cover (panel 62a) having a cut-out portion (where container 76 slides through panel 62a). Regarding claims 14 and 15, the Shumate caddy further includes wheels 64. Regarding claim 16, the Shumate caddy further includes handle 106. Regarding claim 17, the Shumate caddy is "modular" due to its portability and is inherently "upgradeable" due to its replaceability.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shumate.

The Shumate reference discloses a caddy which is inherently used by the claimed method during normal use except for the step of rotating the pump 90 degrees. However, it would have been obvious to rotate the pump 90 degrees, either alone or along with the entire device, in order to align the pump or caddy with other components in its operating environment.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shumate in view of Onken and Pastore.

The Shumate reference discloses a waste cooking oil containment device (see col. 3, lines 34-36) comprising a top, bottom, and body (see Shumate Fig. 3), a control panel 82, and a power supply (see col. 8, lines 15-18), but does not disclose a waste cooking oil measurement device, an oil shut-off device, a display monitor, means for relaying a shut-off signal, or that the control panel is selectively removable. Regarding the oil measurement device, oil shut-off device, display monitor, and means for relaying a signal, the Onken reference discloses a similar oil containment device including an oil level measurement device 36, an oil shut-off device 31, a display monitor (light indicator, see Onken abstract last four lines), and means for relaying a shut-off signal (see Onken col 4, lines 3-4) for preventing overflow of the device. It would have been obvious to employ a waste cooking oil measurement device, an oil shut-off device, a display monitor, and means for relaying a shut-off signal on the Shumate device in view of Onken for preventing overflow of the device. Regarding the selectively removable control panel, the Pastore reference discloses a similar device with a selectively removable control panel (see Pastore abstract line 3) for improved ease of maintenance of the device. It would have been obvious to modify the Shumate device so that the control panel is selectively removable in view of Pastore for improved ease of maintenance of the device. Regarding the claim language "such that the control panel can be used on multiple types of containment devices", it is the Examiner's position that

this language is inherently met by a removable control panel absent positive recitation of the multiple containment devices.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shumate in view of Onken and Pastore as applied to claims 6-8 above, and further in view of Nitschke.

The Shumate reference discloses an oil containment device as discussed supra, but does not disclose an outer skin of stainless steel spaced so as to provide insulation. However, the Nitschke reference discloses a similar device for handling cooking oil including a spaced stainless steel shell 30 so as to provide insulation. It would have been obvious to employ a spaced stainless steel shell on the modified Shumate device in view of Nitschke so as to provide insulation. Regarding claim 6, it would have been obvious to employ steel of a thickness to allow use of the device in temperatures in the range of approximately -10F, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 2336. Regarding claim 7, it would have been obvious to employ a space between the steel and the skin in the range of approximately 1/2 inch, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 2336.

Allowable Subject Matter

The indicated allowability of claim 10 is withdrawn in view of reconsideration of the Shumate reference.

Claims 2-5 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments regarding claim 1 have been fully considered but they are not persuasive. Applicant argues that the removability of the Pastore panel is not due to its usage on multiple types of containment devices as claimed. However, the Examiner's position is that the Pastore panel is inherently capable of use on more than one device due to its removability, and thus it reads on this claim language.

Applicant's arguments regarding claim 9 have been fully considered but they are moot or not persuasive. Applicant first argues that the filter 24 of the Shumate device is not in the container. This is moot because the Examiner has modified the rejection to recite filter 78, which is within the container. Applicant next argues that Shumate does not reference a "portable waste oil storage caddy". However, as the Shumate device is capable of storing waste oil and is portable as discussed supra, it is the Examiner's position that the Shumate device does read on this claim language.

Applicant's arguments regarding claims 6 and 7 have been fully considered but are not persuasive. Applicant argues that the Nitschke shell is merely a casing not intended for insulation. However, this argument is not persuasive. The Nitschke device

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includes both heating and cooling elements, and in order to keep these processes separate, some insulation, such as the disclosed spaced steel shell, is required for the proper functioning of the device.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter T deVore whose telephone number is (571) 272-4884. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pd Pd


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5/26/05